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FISCAL IMPACT STATEMENT

LS 6529

BILL NUMBER: HB 1835

NOTE PREPARED: Mar 29, 2007

BILL AMENDED: Mar 26, 2007

SUBJECT: Race Tracks.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR: Sen. Jackman

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Racetrack Slot Machine Facilities:* The bill authorizes slot machines at racetracks. The bill provides that a person may not operate slot machines in a county unless the county fiscal body has adopted an ordinance permitting the operation of the slot machines. It provides that a licensee may not install more than 1,500 slot machines. It also limits a permit holder who offers slot machines to the number of satellite facility licenses issued to the permit holder before January 1, 2007. The bill specifies certain powers and duties of the Indiana Gaming Commission (Commission) for the purpose of administering, regulating, and enforcing the system of slot machine gambling at racetracks. It provides that a license is null and void if the licensee permanently ends horse racing at the racetrack at which the licensee's slot machines are installed. The bill allows a slot machine facility to be licensed under the alcoholic beverage laws under the same conditions as a riverboat. The bill provides that the Commission shall establish goals for permit holders concerning contracts for goods and services with minority business enterprises and women's business enterprises. It requires these goals to be equal to goals set by the Commission for riverboat gaming licensees. The bill prohibits local development agreements between the permit holders who operate slot machine facilities and political subdivisions.

Initial Slot Machine Licensing Fee: The bill requires an initial licensing fee of \$400,000,000 from each licensee. It also requires the Commission to deposit the initial licensing fees collected into the State General Fund.

Slot Machine Wagering Tax: The bill imposes a graduated Slot Machine Wagering Tax equal to: (1) 25% of the first \$100,000,000 of adjusted gross receipts received during the state fiscal year; (2) 30% of the adjusted gross receipts in excess of \$100,000,000 but not exceeding \$200,000,000 received during the state fiscal year; and (3) 35% of the adjusted gross receipts in excess of \$200,000,000 received during the state

fiscal year. It also provides that all slot machine wagering taxes are deposited into the State General Fund.

County Slot Machine Wagering Fee: The bill imposes a 2% County Slot Machine Wagering Fee on a licensee that offers slot machine wagering. It provides that a licensee is not required to pay more than \$5,000,000 of fees in any state fiscal year. It also provides that the fees are distributed to the county auditor of the county in which the licensee's racetrack is located for distribution to the county and cities and towns in the county.

Gaming Integrity Fee: The bill requires a licensee that offers slot machine wagering to annually pay to the Commission a Gaming Integrity Fee of \$250,000.

15% AGR Set Aside for Horse Racing Purposes: The bill requires a licensee in each state fiscal year to devote to horse racing purses and certain other purposes an amount equal to 15% of the adjusted gross receipts from slot machine wagering. It specifies the distribution of this money. The bill provides that the first \$250,000 (from each racetrack) from the 15% of adjusted gross receipts set aside is to be deposited in the Gaming Integrity Fund. It provides that money distributed to a horsemen's association may not be expended unless the expenditure is for the purposes specified in statute and is either for a purpose promoting the equine industry or equine welfare or is for a benevolent purpose that is in the best interests of horse racing in Indiana. The bill also requires a horsemen's association to: (1) annually file a report with the Indiana Horse Racing Commission concerning the use of the money; and (2) register with the Indiana Horse Racing Commission.

Riverboat Admission Tax Distribution to Horse Racing: The bill specifies that beginning with the first year in which slot machine wagering is allowed, the Riverboat Admissions Tax revenue otherwise distributed to the Indiana Horse Racing Commission is reduced each state fiscal year by the 15% of adjusted gross receipts set aside that is dedicated to purses, breed development, and horsemen's associations.

Problem Gambling Fee: The bill requires a licensee that offers slot machine wagering at racetracks to annually pay to the Division of Mental Health and addiction a Problem Gambling Fee equal \$500,000 for each racetrack at which the licensee offers slot machine wagering.

French Lick Casino Subsidy: The bill provides that in state fiscal years beginning after June 30, 2007, and ending before July 1, 2012, a licensee that offers slot machine wagering shall pay to the Commission a Supplemental Fee equal to 1% of the adjusted gross receipts received from slot machine wagering. It provides that the Supplemental Fees are distributed to the licensed owners or operating agent of each riverboat that first opens for business after June 30, 2006.

Riverboat Wagering Tax Addback: The bill provides that for taxable years beginning after December 31, 2007, the Riverboat Wagering Tax under IC 4-33-13 is not considered a tax based on or measured by income and is not required to be added back to Federal Taxable Income to determine Indiana Adjusted Gross Income.

Other Provisions: The bill provides that the Indiana Horse Racing Commission shall require at least 140 but not more than 160 live racing days at each racetrack and provides that a permit holder may not conduct more than 12 races on a racing day.

The bill specifies the five counties in which a riverboat is currently operating as the Ohio River counties for which a riverboat owner's license may be issued. The bill provides that a person holding a riverboat owner's license for a riverboat on the Ohio River may not move the person's riverboat from the riverboat's location

on January 1, 2007, to another location. It provides that a riverboat is not required to be self-propelled or otherwise have a functioning motor. It also provides that the Commission may by rule determine the point at which a person is considered to be admitted to a gambling excursion or admitted to a riverboat, for purposes of collecting the Riverboat Admissions Tax. The bill authorizes the possession of an antique slot machine that is used for decorative, historic, or nostalgic purposes and makes other changes.

Effective Date: Upon Passage; July 1, 2007; January 1, 2008.

Summary of Net State Impact: (Revised) The potential net impact on the state General Fund and the Property Tax Replacement Fund (PTRF) is outlined in the table below.

State Fund/Revenue Source	FY 2008	FY 2009	FY 2010
General Fund			
Initial Licensing Fees	\$800.0 M	\$0	\$0
Slot Machine Wagering Tax	0	63.3 M	87.5 M
Riverboat Admission Tax Collections*	0	18.0 M	18.1 M
Riverboat Wagering Tax Add Back	(8.5 M - 10.0 M)	(17.0 M - 20.5 M)	(17.5 M - 21.0 M)
Subtotal	790.0 M - 791.5 M	60.8 M - 64.3 M	84.6 M - 88.1 M
Property Tax Replacement Fund			
Riverboat Admission Tax Supplemental Funding**	0	9.2 M	9.1 M
Total	\$790.0 - 791.5 M	\$70.0 - 73.5 M	\$93.7 - 97.2 M
*Riverboat Admission Tax collections currently distributed to the IHRC for various horse racing purposes. **Amounts annually transferred from the PTRF to the Indiana Horse Racing Commission (IHRC) for horse racing purposes to replace Riverboat Admission Tax shortages.			

There are several caveats relating to the totals reported in the table above:

(1) The totals in the table are not adjusted to account for the potential displacement of Riverboat Admission Tax and Wagering Tax revenue by slot machine wagering at Hoosier Park and Indiana Downs. These potential competitive impacts on the fiscal outcomes are indeterminable, but could be significant. As an example, if 1% of the estimated AGR generated by slot machine operations at the horse racetracks is displaced from riverboat casinos, revenue to the PTRF from riverboat taxes could potentially be reduced by about \$1.1 M annually.

(2) The bill imposes a 1% Supplemental Wagering Fee through FY 2012 that would be deposited in a separate account in the state General Fund. The revenue from the Fee would be distributed to the French Lick Casino. The Fee is estimated to generate about \$2.4 M in FY 2009, and \$3.3 M annually from FY 2010 to FY 2012.

(3) The bill requires annual payments totaling \$500,000 by each racetrack owner operating slot machines to the Gaming Integrity Fund established by the bill. The bill requires the Indiana Gaming Commission to administer the Fund, with the revenue used for purposes relating to equine drug testing.

(4) The bill also requires each racetrack owner operating slot machines to annually pay a Problem Gambling Fee of \$500,000 to the Division of Mental Health and Addiction. The bill provides for the Division to use the Fee revenue for the prevention and treatment of compulsive gambling.

Explanation of State Expenditures: (Revised) *Indiana Gaming Commission (IGC)*: The bill requires the IGC to regulate and administer slot machine operations at Hoosier Park and Indiana Downs, including investigation and licensing of owners of the slot machine facilities and suppliers of slot machines. The IGC would incur additional administrative expenses as a result of these new responsibilities. However, the bill does not fund these costs. While the bill provides that licensees pay annual license fees and pay the cost of any investigation by the IGC relating to the licensee, the bill requires this money to be deposited in the state General Fund. The bill allows the IGC to utilize employees to administer slot machine wagering that are employed to administer charity gaming or riverboat gaming.

The bill requires the IGC to place gaming agents at the horse race track slot machine facilities, and authorizes the IGC to employ gaming agents for this purpose. The bill also requires the owners of the horse race tracks to reimburse the IGC for the cost of training the gaming agents, the salaries and other expenses of staff supporting the gaming agents, and the salaries and other expenses of the gaming agents.

The bill also establishes minority and women's business purchasing goals for pari-mutuel permit holders who operate slot machines. It places responsibility for enforcement of these requirements under the IGC. Currently, the IGC administers similar requirements for riverboats.

Penalties: The bill establishes a Class D felony for various types of violations at slot machine facilities. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) *Racetrack Slot Machine Tax and Fee Provisions:* The bill authorizes the operation of slot machines at Hoosier Park and Indiana Downs. The bill limits the number of slot machines at each horse race track to 1,500.

Initial Slot Machine Licensing Fee: The bill imposes an initial licensing fee of \$400 M for each horse racetrack owner to operate slot machines. The fee must be paid before September 1, 2007, with the revenue from the fee distributed to the state General Fund.

Slot Machine Wagering Tax: The bill imposes a state Slot Machine Wagering Tax on annual adjusted gross receipts (total wagers minus winnings paid out) generated by slot machines at Hoosier Park and Indiana Downs. The Wagering Tax is equal to: (1) 25% on the first \$100 M of annual AGR generated by a licensee's slot machines; (2) 30% on annual AGR exceeding \$100 M and up to \$200 M generated by a licensee's slot machines; and (3) 35% on annual AGR exceeding \$200 M generated by a licensee's slot machines. It is estimated that the tax could potentially generate about \$63.3 M in FY 2009 and about \$87.5 M annually thereafter. (Note: It is estimated that annual AGR from slot machines at Hoosier Park and Indiana Downs could potentially total approximately \$325 M. The potential annual growth in this revenue is indeterminable.) Assuming a 12-15 month start-up period, it is estimated that no revenue from this tax will be generated in

FY 2008; with about 9-12 months of revenue potentially being generated in FY 2009. Under the bill, once the IGC approves a slot machine licensee's plans for a permanent facility, it must allow the licensee to operate slot machines in a temporary facility for up to 24 months. The bill allows the IGC to approve a longer period for temporary facility operations. As a result, the start-up period could be reduced to the extent that operations in a temporary facility are established. Revenue from tax is distributed to the state General Fund.

French Lick Casino Subsidy: The bill imposes a Supplemental Wagering Fee equal to 1% of AGR generated by a licensee's slot machines from July 1, 2007, to June 30, 2012. The revenue from the Fee is to be deposited in a separate account in the state General Fund. The bill requires the Fee revenue to be distributed monthly in equal shares to the licensed owners or operating agent of each riverboat casino that first opens for business after June 30, 2006. The French Lick Casino is the only existing riverboat casino that first opened for business after June 30, 2006. The distribution to the French Lick Casino is estimated to total about \$2.4 M in FY 2009, and \$3.3 M annually from FY 2010 to FY 2012.

Gaming Integrity Funding: The bill provides for annual payments of \$500,000 by each horse racetrack owner operating slot machines to the Gaming Integrity Fund established by the bill. The payments are as follows:

- (1) The bill requires annual payment of a Gaming Integrity Fee of \$250,000 by each racetrack owner operating slot machines.
- (2) The bill requires each racetrack owner operating slot machines to devote 15% of the slot machine AGR to various purposes, with the first \$250,000 annually from this set aside to be paid to the Gaming Integrity Fund.

The bill requires these payments to be made to the IGC and requires the IGC to deposit the payments in the Fund. The Fund is nonreverting and is to be administered by the IGC. Money in the Fund may be used by the IGC to: (1) pay the cost of analyzing equine specimens; (2) pay dues to the Drug Testing Standards and Practices Committee of Association of Racing Commissioners International; or (3) provide grants for research for the advancement of equine drug testing.

Problem Gaming Fee: The bill requires each racetrack owner operating slot machines to annually pay a Problem Gambling Fee of \$500,000 to the Division of Mental Health and Addiction. The bill provides for the Division to use the Fee revenue for the prevention and treatment of compulsive gambling relating to slot machine wagering at horse racetracks and gambling at riverboat casinos. The bill specifies that the Fee revenue is in addition to any Riverboat Admission Tax revenue allocated to the Division for the prevention and treatment of compulsive gambling. In FY 2006, the Division of Mental Health received \$4.2 M from the Riverboat Admission Tax.

Existing Riverboat Admission Tax to Horse Racing: The bill replaces the Riverboat Admission Tax subsidy to horse racing with slot machine AGR set aside for horse racing purposes by each racetrack owner operating slot machines. The bill requires each racetrack owner operating slot machines to set aside 15% of the AGR generated by the owner's slot machines for purses, horsemen's associations, and breed development. (Note: The bill requires the first \$250,000 annually from this set aside to be paid to the Gaming Integrity Fund.) The bill authorizes the Indiana Horse Racing Commission to impose a civil penalty of up to \$1 M against the owner of a racetrack if it finds that the owner has not complied with this funding requirement. The 15% set aside is estimated to fully replace the Riverboat Admission Tax subsidy to horse racing beginning in FY 2009. This subsidy consists of: (1) Riverboat Admission Tax collections and (2) the annual supplemental payment from PTRF for replacement of Admission Tax shortages. The bill redirects actual Riverboat

Admission Tax collections otherwise earmarked for the horse racing subsidy to the state General Fund, and discontinues the supplemental Admission Tax payments from the PTRF. Under current statute, \$0.65 per \$3.00 Admission Tax paid is distributed to the IHRC for purses, horsemen's associations, breed development, and the race track subsidy. This annual distribution is guaranteed at \$27.2 M, with the supplemental payment from PTRF making up the difference between the guarantee amount and actual Admission Tax collections. The supplemental payment is made in the fiscal year following the fiscal year of the shortage. In FY 2006 approximately \$17.6 M in Admission Tax collections was distributed to the IHRC. Thus, the supplemental payment from PTRF for the FY 2006 shortage totaled approximately \$9.6 M. The collections total is expected to grow by about 1% to 1.5% per year.

Existing Parimutuel Revenue: Existing Pari-Mutuel Admission Tax: Revenue from the existing \$0.20 Pari-mutuel Admissions Tax could potentially increase if slot machine operations serve to increase paid attendance. Currently, admission is charged at Hoosier Park. Under current statute, 50% of the tax is distributed to the state General Fund. The potential impact is indeterminable.

License Fees: The bill provides for a slot machine operator license, a slot machine supplier's license, and a slot machine occupational license.

(1) The initial slot machine operator's license would be effective for 10 years, with annual renewal thereafter (see discussion of the initial licensing fee above). The annual renewal fee would be \$100 per slot machine operated by the licensee.

(2) The annual fee for a supplier's license would be \$5,000. The bill requires a person to obtain a supplier's license to furnish slot machines to the horse race tracks.

(3) The bill requires the IGC to determine the occupations relating to slot machine operations at racetracks that require licensing. The bill also requires the IGC to set the occupational license fee.

The bill requires slot machine operator licensees and supplier licensees to reimburse the IGC for the cost of any investigation of the licensee. The bill also requires the operator or supplier to pay the occupational license fee and investigation costs for an employee requiring an occupational license. The bill distributes the license fee revenue and investigation cost reimbursement money to the state General Fund.

Fiscal Impact Details: The fiscal impact is based on estimates of potential patrons at slot machine facilities located at Hoosier Park and Indiana Downs. The patron estimates are based on adult population totals from counties not exceeding 120 miles from the two locations. Counties in this group that are closer to casinos in Indiana, Illinois, or Michigan are excluded. Participation and annual visitation rates of casino patrons are based on recent industry survey information. The estimate also assumes that the AGR per patron visit is between \$76 and \$77. It is important to note that the fiscal estimates are not adjusted to account for the potential displacement of Riverboat Admission Tax and Wagering Tax revenue by slot machine wagering at Hoosier Park and Indiana Downs. These potential competitive impacts on the fiscal outcomes are indeterminable, but could be significant. As an example, if 1% of the estimated AGR generated by slot machine operations at the horse racetracks is displaced from riverboat casinos, revenue to the PTRF from riverboat taxes could potentially be reduced by about \$1.1 M annually.

Riverboat Wagering Tax Add Back: The bill specifies that beginning in tax year 2008, the corporate tax addback applicable to state taxes based on or measured by income does not include the Riverboat Wagering Tax. The change is estimated to reduce revenue from the Corporate Adjusted Gross Income (AGI) Tax by

about \$8.5 M to \$10.0 M in FY 2008 and \$17.0 to \$20.5 M in FY 2009. The revenue loss could potentially increase by 3% to 3.5% annually thereafter.

Currently, corporate taxpayers begin computation of the Corporate AGI Tax with their Federal Taxable Income. Current statute requires a corporate taxpayer to add back to Federal Taxable Income any amount deducted for purposes of Federal Income Tax that relates to taxes based on or measured by income and levied at the state level by any state. The Indiana Tax Court in *Aztar Indiana Gaming Corp. v. Indiana Dept. of State Revenue*, 806 N.E.2d 381 (Ind. Tax 2004) concluded that the Wagering Tax is subject to this add back for Corporate AGI Tax purposes. Revenue from the Corporate AGI Tax is distributed to the state General Fund.

Other Gaming Provisions: The bill also provides for the following:

- (1) The bill requires the initial licensee for slot machine operations at a horse race track to hold that license for at least 10 years.
- (2) The bill provides that the license for slot machine operations at a horse racetrack is null and void if the licensee permanently ends horse racing at the racetrack.
- (3) The bill imposes a fee on the transfer of a controlling interest in a license to operate slot machines at one of the horse race tracks. The fee is the greater of zero or 50% of the difference between the selling price of the controlling interest and \$400 M.
- (4) The bill prohibits the Indiana Horse Racing Commission from issuing more than two racing meeting permits annually.
- (5) The bill limits a racetrack owner operating slot machines to the number of satellite facility licenses issued to the owner before January 1, 2007. Currently, Hoosier Park operates satellite facilities in Ft. Wayne, Indianapolis, and Merrillville; and Indiana Downs operates satellite facilities in Clarksville and Evansville.
- (6) The bill prohibits operation of slot machines at Hoosier Park or Indiana Downs unless approved by the county fiscal bodies in Madison County or Shelby County.
- (7) The bill prohibits political subdivisions from imposing a tax or fee (other than real and personal property taxes or certain special assessments) on the owner of a horse race track. The bill also prohibits a political subdivision from entering into a financial incentive agreement with the owner of a horse race track.
- (8) The bill specifies that the five licenses to operate riverboat casinos on the Ohio River are limited to operating a riverboat casino from Vanderburgh County, Harrison County, Switzerland County, Ohio County, and Dearborn County. The bill also prohibits a riverboat casino on the Ohio River from being moved from its current docksite to any other location.
- (9) The bill eliminates the requirement that a riverboat casino be a "self-propelled excursion boat" and instead requires that it be a vessel. It also specifically provides that a riverboat casino does not have to be self-propelled or otherwise have a functioning motor.
- (10) The bill allows the IGC to by rule determine the point at which a person is considered to be admitted to a riverboat casino for purposes of collecting the Riverboat Admission Tax.

Criminal Penalty Provisions: The bill makes it a Class A misdemeanor for a person to knowingly or intentionally aid, induce, or cause a person less than 21 years of age and who is not an employee of a slot machine facility to enter or attempt to enter the facility. It also makes it a Class A misdemeanor for a person who is less than 21 years of age and who is not an employee of a slot machine facility to knowingly or intentionally enter or attempt to enter the facility. The bill also establishes a Class D felony for various types of cheating at slot facilities.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000 and for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Civil Penalty Provisions: The bill also authorizes the IGC to impose civil penalties on slot machine facility licensees for violations by the licensee or licensee's employees of the state law relating to slot machine operations at horse racetracks. The civil penalty may not exceed the greater of \$10,000 or the licensee's daily AGR for the day of the violation. The bill also authorizes the IGC to impose a civil penalty of not more than \$25,000 on a person holding a supplier's license for violations of the state law relating to slot machine operations at horse racetracks.

Explanation of Local Expenditures: *Criminal Penalty Provisions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) *County Slot Machine Wagering Fee:* The bill imposes a County Slot Machine Wagering Fee equal to 2% of the AGR generated by a licensee's slot machines. However, the bill limits the Wagering Fee to \$5 M annually for each licensee. The bill requires a licensee to pay the Fee to the IGC, with revenue from the Fee to be deposited in a separate account of the state General Fund. The bill requires the Fee revenue collected at Hoosier Park to be distributed to Madison County, and the Fee revenue collected at Indiana Downs to be distributed to Shelby County. Within in each county the revenue is to be distributed on a per capita basis to the county, and cities and towns within the county. In state FY 2009, the distribution could potentially total about \$2.9 M for Madison County and \$2.0 M for Shelby County. The distribution could potentially total about \$3.9 M for Madison County and \$2.6 M for Shelby County annually beginning in FY 2010.

Criminal Penalty Provisions: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Indiana Gaming Commission; Indiana Horse Racing Commission; Department of State Revenue; Department of Correction; Division of Mental Health.

Local Agencies Affected: Local units in Shelby County and Madison County; Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; Indiana Gaming Commission, *FY2006 Annual Report*; Harrah's Entertainment, Inc. *Harrah's Survey: Profile of the American Casino Gambler, 2002, 2003, 2004, & 2006*.

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